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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,192	08/21/2003	Scott F. Watson	54317-030700	9068

60226 7590 11/02/2006

DISNEY ENTERPRISES, INC. # 2
BERKELEY LAW & TECHNOLOGY GROUP, LLC
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BEAVERTON, OR 97006

EXAMINER

HUYNH, SON P

ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/646,192

Applicant(s)

WATSON ET AL.

Examiner

Son P. Huynh

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

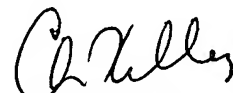
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16, 18-35, 37, 41-48, 52-59, 61, 63 and 72-100.
Claim(s) withdrawn from consideration: 60, 62 and 64-68.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



**CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600**

Continuation of 3. NOTE: Amendments to the claims such as "the set top box", "broadcasting data associated with at least one of said movie", "said set top box" "viewable movie", "having said content provider repeatedly re-broadcast said movie data to ensure that the plurality of full movies are received by the set top box", "the remote user" in claims 10, 18, 26, 30, 52, 59, change scope of the claims and require further search and/or reconsideration.

In response to applicant's arguments that Hunter does not disclose or teach metadata, Hunter teaches away from using metadata, analysis of metadata is used to determine when movies are made available for viewing (page 16, paragraph 2-page 18, paragraph 1, page 20, paragraph 3-page 21, line 2, page 22, paragraph 2, page 27, paragraph 3), the Examiner respectfully disagrees. Hunter discloses customers are able to preselect movies for viewing from as many as thousand movies transmitted monthly...graphical user interface with simplified controls that provide movie selection by title, type, or category (e.g. comedy new release from major studios)... (paragraph 0012). Consumers have access to movies that are automatically recorded, such as popular new release movies and movies that are being promoted by the content provider and/or system operator; operator uses customer preference information to tailor the automatically downloads to that customer user station accordingly... Certain new release movies in high demand within the customer's primary areas of interest may be designated to remain in storage for a minimum period of time, say one week, REGARDLESS of the "traffic" through storage module 230 (see include, but not limited to, paragraphs 0013, 0061, 0073, 0139, 0141, 0144). The content server or operator decides to push a selected movie as promotion and the movies is automatically downloaded into storage module and stored until they are overwritten or deleted, a message "You've got new flick" appears to to the user. Thus, metadata associated with the movies (e.g. movie title, release date, time, or any information for identify the movie and characteristic of the movie) must be transmitted so that the movie/new release movie is identified, selected to recorded, information trigger to display the message of "new flick", or information to identify a movie (e.g., certain new release movie) to push into storage module and make it available for viewing/ designated to maintain in storage for a minimum period of time, REGARDLESS OF "TRAFFIC" through storage module. Therefore, Hunter's disclosure met the claimed limitation "associated metadata" and "analysis of the metadata to determine when to make the movie available for viewing". Hunter does not teach away using metadata when to remove a movie from storage.

In response to applicant's argument that Hunter does not disclose or suggest repeatedly re-broadcast movie data...(page 18, paragraph 2, page 19, paragraph 2), the examiner respectfully disagrees. Hunter discloses new release movies may be transmitted several times per day with concentration before and during prime evening viewing periods, each new release movie is transmitted every day on the hour from 4:30 p.m to 8:30 p.m, and at several other times daily (see include, but not limited to, paragraphs 0061, 0113, 0119). Thus, the limitation of "repeatedly re-broadcast movie data..." is interpreted as re-broadcasting popular movies (e.g. new release movie) several times per day, every day on hour from 4:30 pm to 8:39 pm and at several other times daily, or every 30 minutes from 5:30 p.m to 8:30 p.m.

In response to applicant's argument that Hunter does not disclose content provider does not control the downloading of movies and therefore cannot necessarily determine a time for removal of movie data (page 19, paragraph 1, page 20, paragraph 2, page 24, paragraph 1, page 25, paragraph 1, page 26, paragraph 1), the examiner respectfully disagrees. Hunter discloses popular movies (e.g. new release movie) are pushed to be downloaded by the content provider and/or operators and made available for on-demand viewing for a designated period of time regardless of traffic through the storage (see include, but not limited to, paragraphs 0013, 0139, 0144). Thus, Hunter discloses content provider controls the downloading of movies and therefore determines a time (e.g. after designated period of time) for remove of movie data.

In response to applicant's argument that there is no suggestion/motivation to combine the references (page 28, paragraph 1-page 29, line 2), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In particular, Hunter discloses a system that provide video program (i.e. movie) to a receiving device, and user selects a video program to view (see include, but not limited to, figures 4,11,15). Dodson also discloses a system that provides video program to a receiving device, and user selects a video program to view (see include, but not limited to, figure 2). Dodson further discloses a controller simultaneously plays a video being displayed on the TV and reacts to signals from a remote control (206), and modem activity (e.g. Internet interface 106) - see figure 1-8, col. 2, line 46-col. 3, line 28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hunter to use the teaching as taught by Dodson in order to immediately provide additional information to a user (col. 1, lines 40-55), allow user to simultaneously watch the program and additional information on the same screen.

Maruo also discloses a system that provide video program to a receiving device, and user select a video program to view (see include, but not limited to, figures 4, 5a,7, col. 7, lines 5-13, col. 8, lines 47-62). Maruo's disclosure of smart card... reads on "a smart card secured to a circuit board of the receiver" and smart card facilitates a dedicated use of the receiver with a designated user as discussed in page 29 of the Final Office Action, dated 04/21/2006. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hunter to use the teaching as taught by Maruo in order to improve convenience for user to pay the bill and reduce unauthorized user to access pay per view program, thereby reduce lost in revenue.

For the reasons given above, rejections on claims 4-16,18-35,37,41-48,52-59,61,63,72-100 are maintained as discussed in the Final Office Action dated 04/21/2006..